

## Early Intervention Services Operational Standards, Appendix B: Massachusetts Early Intervention System Procedural Safeguards and Due Process Standards

### Purpose

The purpose of these standards is to establish due process standards for public and private early intervention programs certified or funded by the Department of Public Health with respect to notice of rights, informed consent, records and confidentiality, appeals and complaints.

A. The Massachusetts Department of Public Health shall be responsible for:

1. Establishing or adopting due process procedures that meet the requirements of 34 CFR 303.400 through 303.406, 303.419 through 303.425, 303.460 and 303.510 through 303.512 and providing parents a means of filing a complaint or requesting to resolve a disagreement through mediation.
2. Ensuring effective implementation of the safeguards by each provider in the Commonwealth that is involved in the provision of early intervention services under this part.
3. Ensuring that an impartial person will be appointed to implement the complaint resolution process referred to in this section.
  - a. "Impartial" as used in this section means that the person appointed:
    - i. is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and
    - ii. does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.
4. Establishing or adopting policies and procedures to ensure the protection of any personally identifiable information collected, used, or maintained under this part, including the right of parents to written notice of and written consent to the exchange of this information across agencies or providers consistent with Federal and State law.
5. Ensuring that, parents of a child eligible under Part C are given notice that they may determine whether they, their child, or other family members will accept or decline any early intervention service under this Part in accordance with these due process procedures and may decline such a service after first accepting it, without jeopardizing other agreed upon early intervention services under this part.

B. These policies and procedures are intended to meet the requirements as stated in 34 CFR 300.560 through 300.576 (Part B) with the modifications specified in 34 CFR 303.5(b).

### II.) Authority

These procedures are adopted pursuant to 34 CFR 303.400 - 303.406, 303.419 through 303.425, and 303.510 - 303.512

### III.) Scope

These procedures govern the conduct of early intervention providers and the Department with respect to certain aspects of evaluation, assessment, eligibility for services, and the provision of early intervention services. The regulations are based upon the Department's participation in the federal Part C program.

### IV.) Definitions

A. **Days** shall mean calendar days.

B. **Early intervention services** shall mean those services specified in 34 CFR 303.12, 303.13 and 303.14.

C. **Parental consent** shall mean that:

1. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language unless clearly not feasible to do so, and shall otherwise be done in the manner best understood by the parent.

2. The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. The explanation shall be in the parent's native language unless clearly not feasible to do so and shall otherwise be done in the manner best understood by the parent. The parent shall have an opportunity to discuss the explanation and to have questions answered. If the explanation is not in the parent's native language, the parent shall be provided, whenever feasible, with a list of interpreters in that language.

**D. Native language** shall mean the language or mode of communication normally used by the parent of a child seeking or using services. If the parent has a vision or hearing impairment, the mode of communication shall be that normally used by the parent, such as sign language, Braille, oral communication or other appropriate mode of communication.

**E. Parent** shall mean;

1. a natural or adoptive parent of the child,
2. a guardian,
3. a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives),
4. a person who is legally responsible for the child's welfare; or a surrogate parent who has been assigned in accordance with 34 CFR 303.406 (section VI (C). of these standards)
5. a foster parent may make decisions required of a parent under Part C of the Act if:
  - a. The natural parents' authority to make decisions required of parents under the Act has been terminated under State law; and
  - b. The foster parent –
    - i. has an ongoing, long term parental relationship with the child;
    - ii. is willing to make decisions required of parents under the requirements of these Due Process procedures; and
    - iii. has no interest that would conflict with the interests of the child.

**F. Personally identifiable** shall mean information that includes:

1. the name of the child, the child's parent, or other family member,
2. the address of the child,
3. a personal identifier, such as the child's or parent's social security number; or
4. a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

**G. Early Intervention provider** shall mean any public or private program which offers early intervention services and which is funded or certified by the Department to provide such services.

**H. Written informed consent** shall mean a form or other written record which serves as evidence that the explanation required for informed consent, as defined in subsection C of this section, has been provided. The parent's signature shall serve as documentation that the parent understands and agrees to the proposed terms and activities.

**I. Destruction** shall mean the physical destruction or removal of personally identifiable information from all records.

**J. Education record** means the record covered by the Family Educational Rights and Privacy Act (FERPA:34 CFR Part 99)

**K. Participating agency** shall mean any agency, provider or institution, which collects, maintains or uses personally identifiable information or from which such information is obtained.

## **V.) Notice of Rights**

**A.** Upon receipt of a referral or application, and upon initial development and periodic review of the Individualized Family Service Plan (IFSP), the parent shall be given a notice in writing of the process involved in arranging for

and providing assessments, evaluations, and services and the rights of the parent in that process. The notice shall be written in language understandable to the general public.

1. The notice shall be in the parent's native language, unless clearly not feasible, or otherwise in the manner best understood by the parent.
  - a. If the parent's native language or other mode of communication is not written, the program shall ensure that the notice is translated orally or by another means in the parent's native language unless clearly not feasible to do so and shall otherwise be done in a manner best understood by the parent;
  - b. If the parent is deaf or blind, or has no written language or mode of communication, the notice shall be provided in the language/mode of communication normally used by the parent unless clearly not feasible to do so and shall otherwise be done in a manner best understood by the parent.
2. The provider will ensure that:
  - a. the parent understands the notice to the maximum extent feasible;
  - b. there is written evidence that these requirements have been met;
  - c. the parent has been given an opportunity to discuss the contents of the notice and have questions answered.
3. The notice shall specify the right to:
  - a. receive a multidisciplinary eligibility evaluation of a child from 0 through 2 years of age within 45 days of referral;
  - b. if eligible, receive appropriate assessment and IFSP development within 45 days of referral;
  - c. if eligible, receive appropriate services for the child and family;
  - d. receive notice of the opportunity to participate in any meeting where it is expected that a decision will be made about early intervention services for a child or family;
  - e. receive notice before a provider proposes or refuses to initiate or change an identification, placement, evaluation, assessment or service, in accordance with this section;
  - f. grant or refuse informed consent in accordance with section VI (A)&(B);
  - g. appeal a disputed matter concerning an evaluation, identification, placement, assessment or the process of IFSP development (in accordance with the section on Complaint Resolution), section IX;
  - h. file a complaint about non-compliance issues or any violation of Part C (34 CFR 303.1-303.654) in accordance with Section VIII.
  - i. confidentiality of personally identifiable information, in accordance with the definition of personally identifiable section VII;
  - j. review, or amend records, in accordance with section VII;
  - k. use a lawyer, advocate or other representative in any matter pertaining to early intervention services;
  - l. receive an explanation of the use of and effect upon insurance;
  - m. appeal a decision of a hearing officer to an appropriate state or federal court;
  - n. other appropriate procedural safeguards available under Part C (CFR 303.400-303.460 and 303.510-303.512)

B. The parent shall be given a readily understandable written notice a reasonable time before a provider proposes or refuses to initiate or change the identification, evaluation or placement of a child, or the provision of early intervention services to the child or family.

1. The notice shall be in the parent's native language, unless clearly not feasible, or otherwise in the manner best understood by the parent.
  - a. If the parent's native language or other mode of communication is not written, the program shall ensure that the notice is translated orally or by another means in the parent's native language, unless clearly not feasible to do so, or otherwise in a manner best understood by the parent;
  - b. If the parent is deaf or blind, or has no written language or mode of communication, the notice shall be provided in the language/mode of communication normally used by the parent, unless clearly not feasible to do so or otherwise in a manner best understood by the parent.
2. The provider will ensure that:
  - a. the parent understands the notice to the maximum extent feasible; and
  - b. there is written evidence that these requirements have been met.
  - c. the parent shall be given an opportunity to discuss the contents of the notice and have questions answered.
3. The notice shall specify:
  - a. the action(s) being proposed or refused and what will happen with respect to actions which the parent objects to or requests;
  - b. the reasons for taking the action(s); the need for informed consent, as specified in section VI (A)&(B), and the right to refuse consent;

- c. when applicable under section VIII, the right to request a mediation or due process hearing or file a complaint, and to receive services not in dispute;
- d. the right to consent to some services, evaluations, and assessments and reject others, without jeopardizing other services under this part;
- e. all other procedural safeguards available under Part C (CFR 303.401-303.460).

## VI.) Parent Consent

A. Written parental consent, as defined in section IV (C), must be obtained:

- 1. before conducting an evaluation or assessment or a reassessment or re-evaluation. Prior to any assessment involving family members, informed consent satisfying the requirement of IV (C) shall be obtained from all involved family members;
- 2. at the time the initial IFSP and any subsequent IFSP is developed or any revisions are made to an IFSP;
- 3. before a change in identification, placement, evaluation, assessment, or reduction in services or change in the type of services.

B. If a parent does not give consent, the program must make an effort to ensure:

- 1. that the parent is fully aware of the nature of the evaluation, assessment or services that would be available; and
- 2. that the parent understands the child will not be able to receive an evaluation, assessment or services without consent.

C. Parent's Right to Decline Service

Parents may determine whether they, their child or other family members will accept or decline any early intervention service. Parents may also decline such a service after first accepting it, without jeopardizing other early intervention services.

D. Surrogates

- 1. The provider should, within a reasonable time of application or referral, assign a surrogate to represent the rights of eligible children in the following circumstances:
  - a. when the provider, after reasonable efforts, is unable to identify or locate the parent, guardian or person acting as parent of a child (this includes a foster parent as specified in Sec IV (E, 5.) unless he or she indicates or demonstrates an unwillingness or inability to serve in this capacity);
  - b. when the child is in the legal custody of a state agency.
    - i. If the foster parent is unwilling or unable to serve as "parent" for the child, the provider, with the assistance of the IFSP team, should endeavor to appoint an effective advocate for the child, with preference given to someone who is known to the child and family and has an understanding of the child and family's cultural, linguistic and religious background.
    - ii. The provider will ensure that the person selected as a surrogate parent has knowledge and skills that ensure adequate representation of the child; and that the surrogate is impartial, has no interest which conflicts with the child's interests and is not an employee of the provider or any other agency providing early intervention services to the child or to any family member of the child, the Departments of Public Health or Social Service, or any other state agency involved in the provision of services to the child.
    - iii. Even when there is a surrogate appointed, if reunification of the child and the natural parent is the goal of the DSS service plan, the provider shall make every effort to have the natural parent participate in decision making about the provision of services, unless the natural parent's rights to participate have been terminated by judicial process.
- 2. The surrogate shall have the same rights as a parent under these standards, including the right to consent, revoke or withhold consent and to represent the child in all matters pertaining to evaluation, assessment, IFSP development, the provision of early intervention services and any other rights established under this part.

3. In the event that the provider is unable to identify a suitable surrogate for a child in state custody, the Department shall appoint a surrogate. The Department shall maintain a list of approved surrogates and procedures for appointing a surrogate from that list.
  - a. The Department shall endeavor to appoint an effective advocate, with a preference given to a person with an understanding of the child and family's cultural, religious and linguistic background.
  - b. The Department shall ensure that the person selected as a surrogate parent has knowledge and skills that ensure adequate representation of the child; he/she will be knowledgeable and trained in the developmental needs, service options, and legal rights of children eligible for early intervention services, shall be impartial, have no interest which conflicts with the child's interests and shall not be an employee of the Department, the Department of Social Services or a provider; provided, however, that such person may be paid by the Department for serving as a surrogate.

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## **VII.) Records**

### **A. Definition**

1. A record is any information, regardless of location, recorded in any way, maintained by an agency or service provider or any party acting on behalf of the agency or service provider.
2. A record includes any file, evaluation, report, study, letter, telegram, minutes of meetings, memorandum, summary, intra-office communications concerning an individual, notes, charts, graphs, data sheets, films, videotapes, slides, sound recordings, discs, tapes and information stores in microfilm or microfiche or in computer readable form.

### **B. Parent Access**

1. The Department of Public Health and the provider shall presume that the parent has the authority to review and inspect records related to the child unless the Department or provider has been advised that the parent does not have this authority under state law.
2. The Department or provider shall, within five days of request, give the parent a list of the types and locations of records collected, maintained or used by the Department or provider.
3. The parent shall be afforded the opportunity to inspect and review any such record relating to evaluations, assessments, eligibility determination, development and implementation of IFSP, due process hearing, individual complaints dealing with the child, and any other area involving records about the child/family. This includes all records collected and maintained by the provider. The provider should notify all parties asked to submit records for a child's file that they are open to the parent under the provisions of 34 CFR 303.402 and 34 CFR 300.560 through 300.576.
4. The right to review a record includes the right to an explanation or interpretation of the record and the right to have a representative of the parent view the record and the right to request that the agency provide a copy of the records containing the information. Agencies may charge a reasonable fee for copying records, if the fee does not prevent the parent from exercising the right to inspect and review records. Agencies may not charge fees to search for or retrieve records.
5. An agency or service provider shall comply without unnecessary delay and no later than 10 days of receiving the request.
6. Where records are requested in connection with a meeting regarding the IFSP or a formal hearing, the agency or service provider shall comply at least five days before the meeting or hearing.
7. If a record contains information on more than one child, the parent has a right to inspect only those portions of the record pertaining to his or her child.

### **C. Amending the Record**

1. If a parent feels that the information in early intervention records that is collected, maintained, or used is inaccurate, irrelevant, misleading, or violates the privacy or other rights of the child, he/she may request that the participating agency which maintains the records to amend the information.
2. The holder of the record shall respond within 30 days. If the holder of the record finds that the objection is valid, it shall amend the contents of the records or the methods for holding or using such data and duly notify the parent in writing. If the holder refuses to amend the record, it shall so notify the parent in writing of the decision, the right to appeal pursuant to section VIII, and the right to place a statement in the

- record reflecting the parent's views, which would be maintained and disseminated with the rest of the record.
3. In responding to a parent's objection, the holder of the record may not amend the contents of a record that was submitted to the child's file by a source outside of the provider agency. The provider may agree to amend the record by placing a statement in the record reflecting the parent's (and/or the provider's) views and direct the parent to contact the originator of the record to request that a corrected copy be placed in the file.
  4. A parent, upon request, must be granted a hearing to challenge information contained in an early intervention educational record.
    - a. such a hearing shall be conducted under procedures in section 99.22 of the Family Educational Rights and Privacy Act (FERPA: 34 CFR Part 99);
    - b. If the hearing officer finds that the information is inaccurate, misleading, irrelevant, or violates the privacy or other rights of the child or family, the record shall be amended and the parent so notified in writing.
    - c. If the hearing officer finds that the information is not inaccurate, misleading, irrelevant, or not a violation of the privacy or other rights of the child and family, the parent shall be informed of the right to place in the record a statement of the parent's views. This statement shall be maintained by the agency for as long as the contested part of the record is maintained, and disseminated with the record.

#### D. Confidentiality

1. The Department of Public Health and providers shall ensure the protection of confidential personally identifiable information at collection, storage, disclosure and destruction stages.
2. All records and information pertaining to a child or family shall be confidential. All holders of personally identifying information shall comply with the confidentiality provisions of M.G.L. c. 66A and related regulations. All records must contain an access sheet that keeps record of parties obtaining access to the record. This sheet must list the name of the party requesting access, and the date and purpose of access.
  - a. Records and personally identifying information shall not be disclosed, even to prospective providers of services, without the parent's written informed consent; provided, however, that records may be inspected by health personnel in response to a health or safety emergency or by state and federal agencies for purposes of audit, evaluation for compliance with legal and contractual requirements, and certification. Personally identifiable information shall not be used for purposes other than meeting the requirements of this part without parental consent. Beyond these exceptions any additional release of information will not occur without parental consent.
  - b. The Department and each provider shall appoint an employee responsible for ensuring confidentiality. The Department and each provider shall maintain a current list of employees with access to personally identifiable information and shall provide these employees with training concerning the state's policies and procedures under 34 CFR 300.129 and 34 CFR Part 99 (FERPA). Supervision and monitoring procedures will ensure that all providers meet confidentiality requirements.
3. A record holder shall establish written procedures which protect the contents of early intervention records containing sensitive information, such as information pertaining to sexual or physical abuse, mental health treatment, HIV or other communicable disease status, or a child's parentage.
4. If the Department or provider maintains personally identifying early intervention information not subject to the Family Educational Rights and Privacy Act (FERPA: 34 CFR Part 99), it shall protect that information pursuant to the confidentiality provisions of 5 USC 522A and related regulations.
5. Upon discharge from early intervention services, the provider shall notify the parent that personally identifiable information is no longer needed to provide services to the child or family. Such information must be destroyed at the request of the parent, or the provider may destroy it after seven years. However, a permanent record may be maintained without time limitation of the child and family's name, address and phone number, and the types and dates of services received.
6. The Department and program shall meet any additional confidentiality requirement specified in 34 CFR 300.560 - 300.576 with the following modifications:
  - a. any reference to the "State Education Agency" means the Department of Public Health;
  - b. any reference to "special education", "related services", "free appropriate public education", "free public education" or "education" means the provision of early intervention services;
  - c. any reference to "local education agencies" and "intermediate educational units" means certified early intervention programs;
  - d. any reference to "Identification, Location and Evaluation of the Child with Disabilities" means "Comprehensive Child Find System."
  - e. any reference to "Confidentiality of Personally Identifying Information" means "Confidentiality of Information";

- f. any reference to "education records" means the type of records covered under the definition of education records in Part 99 of the Family Educational Rights and Privacy Act of 1974 (FERPA);
- g. any reference to "participating agency" when used in reference to a local educational agency or an intermediate educational agency, means a local service provider;
- h. any reference to "destruction" means physical destruction or removal of personal identification from information.

## **VIII.) Lead Agency Procedures for Complaint Resolution**

The Department of Public Health offers parents of children enrolled in Massachusetts early intervention programs and others, options for the resolution of complaints and/or disputes. The following procedural safeguards reflect the federal regulations of Part C of IDEA (34 CFR 303.419-303.425 and 303.510-512) and provide parents a means of filing a complaint or requesting to resolve a disagreement through due process in a timely, impartial and consistent manner.

1. In accordance with 34 CFR Sec. 303.510 – 303.512, the Massachusetts Department of Public Health shall be responsible for adopting written procedures to (1) investigate any complaint that it receives (including individual child complaints and those that are systemic in nature) and (2) resolve the complaint if the agency determines that a violation has occurred. This includes a complaint filed by an organization or individual from another State indicating that any public agency or private service provider is violating a requirement of the regulations as stipulated by Part C of the Individuals with Disabilities Education Act (IDEA).
2. All such complaints and requests for mediation and/or due process hearings shall be filed with the Department.
3. Information on the availability of this type of administrative complaint resolution process shall be widely disseminated to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers and other appropriate entities, the States procedures under Sections 34 CFR 303.510 through 303.512.

### **A. Formal Administrative Complaints**

1. In resolving a complaint in which it finds failure to provide appropriate services, the Department will address:
  - a. How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and
  - b. Appropriate future provision of services for all infants and toddlers with disabilities and their families.
2. In accordance with CFR Sec. 303.511, an individual or organization may file a written, signed complaint under Sec. 303.510. The complaint must include:
  - a. A statement that the State or early intervention provider has violated a requirement of Part C of the IDEA or the regulations in this part; and the facts on which the complaint is based.
  - b. Limitations. The alleged violation must have occurred not more than one year before the date that the complaint is received by the Department unless a longer period is reasonable because:
    - i. the alleged violation continues for that child or other children; or
    - ii. the complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.
3. In accordance with 34 CFR Sec. 303.512:
  - a. The Department shall include in its complaint procedures a time limit of 60 calendar days after a complaint is filed under Sec. 303.510(a) to:
    - i. carry out an independent on-site investigation, if the Department determines that such an investigation is necessary;
    - ii. give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
    - iii. review all relevant information and make an independent determination as to whether there has been a violation of a requirement of Part C of IDEA or of this Part; and
    - iv. issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact, conclusions and the reason for the lead agency's final decision. The Department's procedures may permit an extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

- v. include procedures for effective implementation of the Department's final decision, if needed, including—
    - technical assistance activities;
    - negotiations; and
    - corrective actions to achieve compliance.
- 4. If a written complaint is received that is also the subject of a due process hearing under Sec. 303.420, or contains multiple issues, of which one or more are part of that hearing, the Department will set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action will be resolved within the 60-calendar-day timeline using the complaint procedures described in paragraphs (3) (a) and (b) of this section.
- 5. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties—
  - a. The hearing decision is binding; and
  - b. The Department must inform the complainant to that effect.
- 6. The Department will resolve a complaint alleging a public agency's or private service provider's failure to implement a due process decision.

## **IX.) Requests for Due Process Hearings and Mediations**

### **A. Filing:**

1. A parent or early intervention provider may file a request for a due process hearing and/or mediation under this subsection on any issue in dispute as to identification, evaluation, assessment, determination of eligibility, the process of developing the IFSP, and the appropriateness of early intervention services to be provided. A parent or provider may also seek resolution of a dispute by filing a complaint pursuant to section VIII.
  - a. A request for a due process hearing or mediation shall be in writing. As needed or requested, the Department shall assist the parent in drafting and filing the hearing or mediation request.
  - b. Within three days of receiving a request for a due process hearing or mediation under this subsection (A), the Department shall notify the parent of free or low cost legal and advocacy services, and of the right to be advised by an individual with special knowledge of early intervention services; the option of mediation, including a description of the mediation process and its voluntary nature; and the alternative of having the Department investigate the complaint pursuant to 34 CFR 303.510 through 303.512. The Department shall also send the parent a copy of the notice of rights specified in this section.
  - c. During the pending process of appeal or mediation, the child and family shall be entitled to those services which are currently being provided or, if initial services, are not in dispute. If there is a dispute between agencies or providers as to payment for early intervention services provided under the IFSP, the Department shall ensure the provision of services without charge until the dispute is resolved.

### **B. Mediation Process:**

1. Whenever a hearing is requested, parties must be offered the choice to resolve their disputes through a mediation process. Mediation may also be offered and accessed at any time to resolve a dispute. If mediation is requested, the Department shall promptly appoint a qualified and impartial mediator who is trained in effective mediation techniques. The mediator shall promptly schedule a meeting to be held within 14 days, unless otherwise requested by the parent, at a mutually convenient time and place.
2. The Department will send the parent(s) a list of free or low-cost attorneys and advocates who may be available to assist parents through the process.
3. The Department will ensure that the mediation process is:
  - a. voluntary on the part of the parties;
  - b. is not used to deny or delay a parent's right to a due process hearing or any other rights afforded under 34 CFR Sec. 303.400 – 303.460 and 303.510-303.512;
  - c. is conducted by a qualified and impartial mediator.
4. The Department shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
5. The Department shall bear the cost of the mediation process.
6. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties.
7. A parent may proceed with the hearing process while engaged in mediation. A parent may also request mediation at any time in the hearing process.



8. An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.
9. Discussion that occurs during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

#### C. Procedures to Address the Requests for Due Process Hearing

1. Upon receipt of a request for due process hearing under this section, the Department shall promptly appoint an impartial hearing officer who shall be knowledgeable about the provisions of Part C and the needs of and services available to eligible children. Such hearing officer shall be impartial, and shall not have a personal or professional conflict of interest that interferes with objectivity. The hearing officer shall not be an employee of the Department, or an agency or provider involved in the provision of early intervention services to, or care of the child; provided, however, that such person may be paid by the Department to serve in the capacity of hearing officer.
2. If a parent initiates a request for a due process hearing, the Department will inform the parent of the availability of mediation described in section IX B (34 CFR 303.419).
3. The Department will send the parent(s) a list of free of low-cost attorneys and advocates who may be available to assist parents through the process.
4. The hearing officer shall: promptly arrange for a hearing at a time and a place that is reasonably convenient to the parents and duly notify the parties; listen to the presentation of the relevant viewpoints about the issue(s) in dispute; examine all information relevant to the issues; seek to reach a timely resolution of the complaint; provide a record of the proceedings and mail a written decision to each of the parties.
5. The pre-trial and hearing process shall be governed by the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00, and shall include the right to present evidence, and confront, cross-examine and compel the attendance of witnesses. In addition, the parent shall have the right to:
  - a. have the child and family be accompanied and advised by their own legal counsel and by other individuals with special knowledge or training with respect to early intervention services;
  - b. have the hearing closed to the public, unless otherwise requested by the parents;
  - c. prohibit the introduction of evidence not disclosed at least five days prior to the proceeding, unless agreed to by the parties;
  - d. have the child, who is the subject of the hearing, present;
  - e. be provided with an interpreter whenever feasible at no charge, if required for proper adjudication of the matter;
  - f. be provided with an electronic, or if unavailable, a written verbatim transcription of the proceeding;
  - g. obtain written findings of fact and a written decision.
6. A decision shall be rendered within 30 days of receipt of the request for a hearing.
7. Not later than 30 days after the receipt of a parent's complaint, the parties shall be notified by mail in writing of the decision, the reasons for the decision, all relevant findings of fact and conclusions of law, and the right to appeal the decision in state or federal court.
8. The Department will maintain a central file of decisions, which shall be a public record with the exception of personally identifying information.
9. The hearing officer's decision shall be promptly implemented.

#### D. Status of Child During Proceedings

1. During the pendency of any administrative or judicial proceeding involving a request for a due process hearing under section IX.B. and C. (CFR 303.420), unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.
2. If the proceeding involves an application for initial services under this section, the child must receive the agreed upon service.
3. This section does not apply if a child is transitioning from early intervention services under this part to preschool services under Part B of the IDEA.